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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 14th February 2011

No. 1620—li/1-(B)-66/1995-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th December 2010 in I. D. Case No. 113 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Jay Durga Industries, Jagatpur, Cuttack and its Workman Shri Krushna Chandra Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 113 OF 2008
(Previously registered as I.D. Case No. 17 of 1996 in the file of the
Presiding Officer, Labour Court, Bhubaneswar)

The 6th December 2010

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Jaya Durga Industries, Jagatpur, Cuttack. .. First-party—Management

And

Shri Krushna Chandra Das, .. Second-party—Workman
Village Malatunupur, P.O. Mala Sasan,
Via Rameswar, Dist. Cuttack.

Appearances :

None .. For the First-party—Management

Shri T. Lenka, Authorised Representative. For the Second-party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No.18856- li/1(B)-66/95-LE., Dt. 28-12-1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No.4138- li-21-32/2007-L.E., dated the 4th April 2008. The Schedule of reference runs as follows:-

“Whether the termination of services of Shri Krushna Chandra Das, Cartoon Print Machine Operator by the Employer of M/s Jay Durga Industries, Jagatpur, Cuttack with effect from the 18th August 1994 is legal and/or justified ? If not, to what relief he is entitled ?”

2. The pleadings of the second-party workman is to the effect that in April 1993 he was initially engaged in M/s Jaya Durga Industries, the first-party. Thereafter, in April 1994 the first-party sent him to work in M/s Mohan Industries, Mahanadi Vihar, Cuttack which the first-party had taken on lease. While working in Mohan Industries the second-party met with an accident in which he lost his little and ring fingers. After treatment he resumed work in Jaya Durga Industries where he worked from 21-7-1994 to 15-8-1994 and thereafter he was again engaged in Mohan Industries. Since the first-party had assured him to meet the medical expenses which the workman had incurred due to the aforesaid accident, he asked the management on 17-8-1994 to reimburse the medical expenses. On the next day i.e. 18-8-1994 when the workman went to his work place the first-party did not allow him to perform duty.

3. In the written statement filed by the first-party it is pleaded that the second-party is not a workman of the first-party, that the management had never taken M/s Mohan Industries on lease, that there did not exist employer-employee relationship between the parties and that in view of the aforesaid facts the question of termination of service of the second-party by the management does not arise.

4. Though the management filed its written statement but after settlement of issues, the first-party did not take part in the proceeding. Therefore, it has been set *ex parte*.

5. The following issues have been settled :—

ISSUES

(i) “Whether the termination of services of Shri Krushna Chandra Das, Cartoon Print Machine Operator by the Employer of M/s Jay Durga Industries, Jagatpur, Cuttack with effect from the 18th August 1994 is legal and /or justified.?”

(ii) If not, to what relief he is entitled ?”

6. The second-party has examined himself as W.W. No. 1. No document has been exhibited.

FINDINGS

7. *Issue Nos. (i) :—* The affidavit evidence of the second-party contains the facts pleaded in his claim statement. The second-party has stated on Oath that the first-party employed him in

Jaya Durga Industries for Cartoon Printing work but subsequently he was asked to work in Mohan Industries which the first-party had taken on lease basis. There is nothing to disbelieve the sworn testimony of the second-party. Since the management has not adduced any evidence and W.W. No. 1 has not been cross-examined this Tribunal is to record its finding on the unchallenged testimony of W.W. No. 1. It is to be believed that the first-party after engaging the workman in Jay Durga Industries had sent him to work in Mohan Industries. Therefore, the first-party is the employer of the second-party.

8. The second-party claims that when he asked the first-party to reimburse the medicine expenses which he had incurred for his treatment due to the accident he had met while working in Mohan Industries, he was denied employment with effect from the 18th August 1994. In absence of any evidence to the contrary it is to be presumed that the second-party was in continuous employment under the first-party from April 1993 till the refusal of employment which is more than one year of continuous service. Therefore, the refusal of employment without complying with the Statutory requirements is illegal and unjustified.

The issue is answered accordingly.

9. *Issue No. (ii)* :—The second-party was under the employment of the first-party for little more than one year. He claims that he is an experienced Flat Machine Operator. On 6-11-2009 when he sworn his affidavit evidence he was aged about 58. So, now he is aged about 59. The second-party has not disclosed whether he was appointed as a regular employee. He has also not disclosed the wages he used to receive from the first-party. He has fought this litigation for over fifteen years. Considering all these facts and circumstances this Tribunal considers it appropriate to award compensation in lieu of reinstatement with back wages. In the facts and circumstances, the second-party be paid a compensation of Rs. 30,000 (Rupees thirty thousand) only by the first-party within a period of three months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
6-12-2010
Presiding Officer
Industrial Tribunal, Bhubaneswar

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Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government